

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BARKAT S. HOODA, M.D.

Civil Action No.: 1:11-cv-00504-RJA-HKS

Plaintiff,

v.

W.C.A. SERVICE CORPORATION d/b/a
WCA HOSPITAL, BETSY T. WRIGHT,
Virginia B. Campion, M.D.; Tariq M. Khan, M.D.;
and Robert L. Daniels, M.D.

Defendants.

PLAINTIFF'S NOTICE OF MOTION TO DISMISS

COMES NOW BARKAT S. HOODA, M.D. (hereinafter "Dr. Hooda" or "Plaintiff"), and files this notice of motion to dismiss pursuant to Local Rule 7(a)(1).

1. This case is before the Court after being transferred from the Southern District of Texas, Houston Division.

2. Plaintiff Barkat S. Hooda, M.D. filed his Original Petition against Defendants on December 16, 2010, alleging defamation, tortious interference with prospective relations, conspiracy, and negligence. Plaintiff also requests injunctive relief ordering Defendants to retract, remove, and withdraw the false report they filed with the National Practitioner DataBank.

3. On June 3, 2011, The Honorable Lee Rosenthal transferred this case from the Southern District of Texas to the Western District of New York after finding the latter to be a more appropriate venue.

4. On July 14, 2011, Defendants filed an answer and counterclaim.

5. Defendants' counterclaims are the following: (1) "Plaintiff BARKAT HOODA, M.D., has made false statements of fact in the complaint;" (2) "Plaintiff BARKAT HOODA, M.D., has made unsubstantiated allegations against Defendants, WCA HOSPITAL and BESTSY WRIGHT, in the Complaint;" (3) "Because of such false statements and unsubstantiated allegations, Defendants allege, upon information and belief, that the Complaint is frivolous;" and (4) the Complaint was filed in "bad faith." *See* Answer and Counterclaim of WCA and Betsy Wright at ¶¶ 31-34.

6. Defendants also attempt to invoke a provision of the Texas Occupations Code Section 160.008 to show entitlement for attorneys' fees and costs because Plaintiff's lawsuit is frivolous. *Id.* at ¶. Defendants overlook the purpose of this statute. Section 160.008 only applies in situations where a physician brings a civil action as a result of participation in a peer review. Because this case was not filed as a result of a peer review action, Section 160.008 is inapplicable.

7. Plaintiff moves to dismiss Defendants' "counterclaims" pursuant to Federal Rule of Civil Procedure 12(b)(6) because none of the three enumerated claims are recognized causes of action in any jurisdiction; the purported causes of action are mere conclusory statements that are not supported by any facts that give fair notice of the nature and basis of the claims; and Defendants' assertions do not show a right to relief that is plausible. Accordingly, all of Defendants' counterclaims against Plaintiff should be dismissed for failure to state a claim on which relief can be granted.

8. Pursuant to this notice, Plaintiff will file Plaintiff Barkat S. Hooda, M.D.'s Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, and a Memorandum of Law in support of the motion.

9. Plaintiff anticipates Defendants will oppose Plaintiff's Motion to Dismiss. Accordingly, Plaintiff anticipates a reply brief will be necessary.

Respectfully submitted,

/s/ W. Craft Hughes

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COUNSEL FOR PLAINTIFF

UNITED STATES DISTRICT COURT
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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2011, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

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